

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Brian B. Egan

Serial No. 09/750,766

Filed: 12/28/2000

Examiner: Clemence S. Han

Art Unit: 2616

For: **VOICE OPTIMIZATION IN A NETWORK HAVING VOICE OVER INTERNET
PROTOCOL COMMUNICATION DEVICES**

Mail Stop Appeals

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

Sir:

STATEMENT FOR DISCOUNTED NOTICE OF APPEAL

A Notice of Appeal is being filed concurrently with this statement. Appellant previously filed a Notice of Appeal on November 10, 2005 and an Appeal Brief on December 23, 2005. Appellant paid the \$500.00 fee associated with the Notice of Appeal and the Appeal Brief when each was filed.

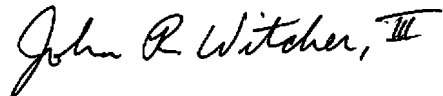
In response to the Appeal Brief filed on December 23, 2005, prosecution was reopened through the mailing of a non-final Office Action on February 27, 2006. Appellant filed a response on May 23, 2006. A Final Office Action was mailed on August 25, 2006 and remailed on February 28, 2007, since the Final Office Action mailed August 25, 2006 was sent to the wrong attorney and neither Appellant nor Appellant's current representative received the Final Office Action. In response to the Final Office Action mailed February 28, 2007, Appellant filed a response on April 30, 2007. Appellant then filed a second Notice of Appeal on August 28, 2007. In light of an Advisory Action mailed August 30, 2007, after Appellant had filed the Notice of Appeal, Appellant decided to reopen prosecution and submitted a response to the Advisory Action with a Request for Continued Examination on November 28, 2007. A non-final Office Action was mailed on March 19, 2008 to which Appellant responded on June 12, 2008. A Final Office Action was issued on October 6, 2008 to which Appellant currently responds by filing a third Notice of Appeal. As such, the Appeal Brief filed on December 23, 2005 was not reviewed by the Board of Patent Appeals and Interferences and no decision was rendered in response to the Appeal Brief. Appellant has continued prosecution and concurrently files a new Notice of Appeal.

Appellant should not have to pay the full amount of \$540.00 for this Notice of Appeal because the Notice of Appeal filed on November 10, 2005, the Appeal Brief filed on December 23, 2005, and the Notice of Appeal filed on August 28, 2007 had been paid for and no decision had been rendered. See M.P.E.P § 1207.04. Appellant notes that the fee for a Notice of Appeal increased by \$40.00. As such, only the \$40.00 fee is due for the current Notice of Appeal. The Director is hereby authorized to charge the \$40.00 Notice of Appeal fee to Deposit Account 50-1732, and to consider this a petition therefor. If any additional fees are required in association with this Notice of Appeal, the Director is hereby authorized to charge them to Deposit Account 50-1732, and consider this a petition therefor.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:



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Attorney Docket: 7000-526